

## CIVIL COVER SHEET

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JS 44 (Rev. 12/07) (cand rev 1-16-08)

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON PAGE TWO OF THE FORM.)

**I. (a) PLAINTIFFS**

VILMA SERRALTA

**DEFENDANTS**

SAKHAWAT M. KHAN; ROOMY KHAN; DOES ONE through TEN, inclusive

(b) County of Residence of First Listed Plaintiff San Mateo County  
(EXCEPT IN U.S. PLAINTIFF CASES)

County of Residence of First Listed Defendant

(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

(c) Attorney's (Firm Name, Address, and Telephone Number)

Christina Chung, Matthew Goldberg, Carole Vigne, Christopher Ho, Legal Aid Society - Employment Law Ctr., 600 Harrison St., Ste. 120, San Francisco CA 94107, 415.864.8848; Hillary Ronen, Rocio Avila, La Raza Centro Legal, 474 Valencia St., Ste. 295, San Francisco CA, 415.575.3500

Attorneys (If Known)

Elizabeth Tippett, Wilson, Sonsini, Goodrich &amp; Rosati, 650 Page Mill Road, Palo Alto, CA 94304, 650.493.9300

**II. BASIS OF JURISDICTION** (Place an "X" in One Box Only)**III. CITIZENSHIP OF PRINCIPAL PARTIES** (Place an "X" in One Box for Plaintiff and One Box for Defendant)

<input type="checkbox"/> 1 U.S. Government Plaintiff	<input checked="" type="checkbox"/> 3 Federal Question (U.S. Government Not a Party)
<input type="checkbox"/> 2 U.S. Government Defendant	<input type="checkbox"/> 4 Diversity (Indicate Citizenship of Parties in Item III)

	PTF	DEF	PTF	DEF	
Citizen of This State	<input type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business In This State	<input type="checkbox"/> 4	<input type="checkbox"/> 4
Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business In Another State	<input type="checkbox"/> 5	<input type="checkbox"/> 5
Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6

**IV. NATURE OF SUIT** (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance	<input type="checkbox"/> PERSONAL INJURY	<input type="checkbox"/> PERSONAL INJURY	<input type="checkbox"/> 422 Appeal 28 USC 158	<input type="checkbox"/> 400 State Reapportionment
<input type="checkbox"/> 120 Marine	<input type="checkbox"/> 310 Airplane	<input type="checkbox"/> 362 Personal Injury—Med. Malpractice	<input type="checkbox"/> 423 Withdrawal	<input type="checkbox"/> 410 Antitrust
<input type="checkbox"/> 130 Miller Act	<input type="checkbox"/> 315 Airplane Product Liability	<input type="checkbox"/> 365 Personal Injury—Product Liability	28 USC 157	<input type="checkbox"/> 430 Banks and Banking
<input type="checkbox"/> 140 Negotiable Instrument	<input type="checkbox"/> 320 Assault, Libel & Slander	<input type="checkbox"/> 368 Asbestos Personal Injury Product Liability		<input type="checkbox"/> 450 Commerce
<input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment	<input type="checkbox"/> 330 Federal Employers' Liability	<input type="checkbox"/> 370 Other Fraud		<input type="checkbox"/> 460 Deportation
<input type="checkbox"/> 151 Medicare Act	<input type="checkbox"/> 340 Marine	<input type="checkbox"/> 371 Truth in Lending		<input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations
<input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans)	<input type="checkbox"/> 345 Marine Product Liability	<input type="checkbox"/> 380 Other Personal Property Damage	<input type="checkbox"/> 820 Copyrights	<input type="checkbox"/> 480 Consumer Credit
<input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits	<input type="checkbox"/> 350 Motor Vehicle	<input type="checkbox"/> 385 Property Damage	<input type="checkbox"/> 830 Patent	<input type="checkbox"/> 490 Cable/Sat TV
<input type="checkbox"/> 160 Stockholders' Suits	<input type="checkbox"/> 355 Motor Vehicle Product Liability	<input type="checkbox"/> 390 Other Personal Injury	<input type="checkbox"/> 840 Trademark	<input type="checkbox"/> 810 Selective Service
<input type="checkbox"/> 190 Other Contract	<input type="checkbox"/> 360 Other Personal Injury			<input type="checkbox"/> 850 Securities/Commodities/ Exchange
<input type="checkbox"/> 195 Contract Product Liability				<input type="checkbox"/> 875 Customer Challenge
<input type="checkbox"/> 196 Franchise				12 USC 3410
REAL PROPERTY	CIVIL RIGHTS	PRISONER PETITIONS	SOCIAL SECURITY	
<input type="checkbox"/> 210 Land Condemnation	<input type="checkbox"/> 441 Voting	<input type="checkbox"/> 510 Motions to Vacate Sentence	<input type="checkbox"/> 861 HIA (1395ff)	<input type="checkbox"/> 890 Other Statutory Actions
<input type="checkbox"/> 220 Foreclosure	<input type="checkbox"/> 442 Employment	<input type="checkbox"/> 511 Habeas Corpus:	<input type="checkbox"/> 862 Black Lung (923)	<input type="checkbox"/> 891 Agricultural Acts
<input type="checkbox"/> 230 Rent Lease & Ejectment	<input type="checkbox"/> 443 Housing/ Accommodations	<input type="checkbox"/> 530 General	<input type="checkbox"/> 863 DIWC/DIW (405(g))	<input type="checkbox"/> 892 Economic Stabilization Act
<input type="checkbox"/> 240 Tort to Land	<input type="checkbox"/> 444 Welfare	<input type="checkbox"/> 535 Death Penalty	<input type="checkbox"/> 864 SSID Title XVI	<input type="checkbox"/> 893 Environmental Matters
<input type="checkbox"/> 245 Tort Product Liability	<input type="checkbox"/> 445 Amer. w/Disabilities - Employment	<input type="checkbox"/> 540 Mandamus & Other	<input type="checkbox"/> 865 RSI (405(g))	<input type="checkbox"/> 894 Energy Allocation Act
<input type="checkbox"/> 290 All Other Real Property	<input type="checkbox"/> 446 Amer. w/Disabilities - Other	<input type="checkbox"/> 550 Civil Rights		<input type="checkbox"/> 895 Freedom of Information Act
	<input type="checkbox"/> 440 Other Civil Rights	<input type="checkbox"/> 555 Prison Condition		<input type="checkbox"/> 900Appeal of Fee Determination Under Equal Access to Justice
				<input type="checkbox"/> 950 Constitutionality of State Statutes
IMMIGRATION	FEDERAL TAX SUITS			
<input type="checkbox"/> 462 Naturalization Application	<input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant)			
<input type="checkbox"/> 463 Habeas Corpus – Alien Detainee	<input type="checkbox"/> 871 IRS –Third Party			
<input type="checkbox"/> 465 Other Immigration Actions	26 USC 7609			

**V. ORIGIN** (Place an "X" in One Box Only)

<input checked="" type="checkbox"/> 1 Original Proceeding	<input type="checkbox"/> 2 Removed from State Court	<input type="checkbox"/> 3 Remanded from Appellate Court	<input type="checkbox"/> 4 Reinstated or Reopened	<input type="checkbox"/> 5 another district (specify)	<input type="checkbox"/> 6 Multidistrict Litigation	<input type="checkbox"/> 7 Judge from Magistrate Judgment
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Transferred from

Appeal to District

**VI. CAUSE OF ACTION**Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):  
Fair Labor Standards Act of 1938, 29 U.S.C. section 201 et seq.

Brief description of cause:

Action to recover unpaid minimum and overtime wages, and penalties for state labor law violations.

**VII. REQUESTED IN COMPLAINT:** CHECK IF THIS IS A CLASS ACTION      DEMAND \$ To be determined  
UNDER F.R.C.P. 23CHECK YES only if demanded in complaint:  
JURY DEMAND:  Yes  No**VIII. RELATED CASE(S) IF ANY**PLEASE REFER TO CIVIL L.R. 3-12 CONCERNING REQUIREMENT TO FILE  
"NOTICE OF RELATED CASE".**IX. DIVISIONAL ASSIGNMENT (CIVIL L.R. 3-2)  
(PLACE AND "X" IN ONE BOX ONLY)** SAN FRANCISCO/OAKLAND SAN JOSE

DATE

March 13, 2008

SIGNATURE OF ATTORNEY OF RECORD

Christina Chung, State Bar No. 194630  
Matthew Goldberg, State Bar No. 240776  
Carole Vigne, State Bar No. 251829  
THE LEGAL AID SOCIETY –  
EMPLOYMENT LAW CENTER  
600 Harrison Street, Suite 120  
San Francisco, CA 94107  
Telephone: (415) 864-8848  
Facsimile: (415) 864-8199

**E-filing**

Hillary Ronen, State Bar No. 228606  
Rocio Avila, State Bar No. 252719  
LA RAZA CENTRO LEGAL, INC.  
474 Valencia Street, Suite 295  
San Francisco, CA 94103  
Telephone: (415) 575-3500  
Facsimile: (415) 255-7593

Attorneys for Plaintiff

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA**

VILMA SERRALTA,

Plaintiff,

SAKHAWAT KHAN; ROOMY KHAN; and  
DOES ONE through TEN, inclusive,

## Defendants.

) Case No.: CV 08 1427  
and ) COMPLAINT FOR DECLARATORY  
 ) RELIEF AND DAMAGES FOR  
 ) VIOLATIONS OF THE FAIR LABOR  
 ) STANDARDS ACT AND CALIFORNIA  
 ) LABOR CODE; AND UNFAIR AND  
 ) UNLAWFUL BUSINESS PRACTICES  
 )  
 )  
 )  
 ) [DEMAND FOR JURY TRIAL]  
)

Plaintiff VILMA SERRALTA complains of Defendants and demands a trial by jury of all issues, and for all causes of action alleges as follows:

## INTRODUCTION

1. For nearly 70 years, the federal Fair Labor Standards Act (“FLSA”) has provided minimum labor protections to employees from substandard working conditions, including the failure to pay proper compensation for all hours worked. This action brought by a domestic worker arises out of Defendants’ pervasive practice of depriving Plaintiff of her most basic rights and protections guaranteed under the FLSA and, by cognate, rights provided by state labor law.

2. For over four years, Defendants routinely denied Plaintiff her lawful wages for the long hours that she worked to clean and maintain their 9,000-square foot residence, to provide childcare, and to otherwise serve Defendants at their beck and call. Behind closed doors, Defendants benefited from Plaintiff's labor and their illegal conduct, concealed in part through their failure to keep accurate employment records mandated by law.

3. By this action, Plaintiff seeks declaratory relief and damages to remedy Defendants' violations of federal and state labor laws and commission of unlawful and unfair business acts and practices.

## JURISDICTION AND VENUE

4. Jurisdiction is conferred on this Court by Section 16(b) of the Fair Labor Standards Act of 1938 (“FLSA”), 29 U.S.C. § 216(b), and 28 U.S.C. §§ 1331 and 1337. Supplemental jurisdiction over Plaintiff’s claims under California law is conferred by 28 U.S.C. § 1337. Pursuant to Civil Local Rule 3-2(d), venue is proper in the Northern District of California because Plaintiff resides in this District, Defendants reside in and employed Plaintiff in this District, and because a substantial part of the events and omissions giving rise to Plaintiff’s claims occurred in this District.

## PARTIES

5. Plaintiff VILMA SERRALTA is 69 years old and is a resident of San Mateo County, California. At all relevant times herein, Plaintiff was employed as a domestic worker by Defendants SAKHAWAT KHAN and ROOMY KHAN in San Mateo County, California. Plaintiff's written consent to become a party to this action is attached hereto pursuant to 29 U.S.C. § 216(b).

6. Defendant SAKHAWAT KHAN, husband of Defendant ROOMY KHAN, is and was

1 at all times relevant herein an individual residing and doing business as Plaintiff's employer in San  
 2 Mateo County, California. At all times relevant herein, Defendant SAKHAWAT KHAN was an  
 3 employer within the meaning of § 3(d) of the FLSA, 29 U.S.C. § 203(d), and California Industrial  
 4 Welfare Commission Wage Order 15-2001 ("IWC Wage Order") § 2(G), codified at 8 Cal. Code  
 5 Regs. § 11150, in that he directly or indirectly employed or exercised control over Plaintiff's wages,  
 6 hours, or working conditions.

7       7.     Defendant ROOMY KHAN, wife of Defendant SAKHAWAT KHAN, is and was at  
 8 all times relevant herein an individual residing and doing business as Plaintiff's employer in San  
 9 Mateo County, California. At all times relevant herein, Defendant ROOMY KHAN was an  
 10 employer within the meaning of § 3(d) of the FLSA, 29 U.S.C. § 203(d), and the IWC Wage Order §  
 11 2(G) in that she directly or indirectly employed or exercised control over Plaintiff's wages, hours, or  
 12 working conditions.

13       8.     Plaintiff is informed and believes and on that basis alleges that Defendants DOES  
 14 ONE through TEN are in some capacity responsible for the violations of law complained of herein.  
 15 Plaintiff, however, is ignorant of the true names and capacities of Defendants sued herein as DOES  
 16 ONE through TEN, inclusive, and therefore sues them by such fictitious names. Plaintiff will amend  
 17 this complaint to allege their true names and capacities when ascertained.

18       9.     Plaintiff is informed and believes and thereupon alleges that at all times material  
 19 herein, each Defendant was the agent, representative, and alter ego of the other Defendants, and  
 20 acted with the knowledge, authority, consent, and ratification of the other Defendants, and all aided  
 21 and abetted the wrongful acts of the others.

22       10.    Wherever this Complaint refers to any act by a Defendant or Defendants, such  
 23 allegations and references shall also be deemed to mean the acts and failures to act of each  
 24 Defendant acting individually, jointly, and/or severally.

25       11.    Plaintiff is informed and believes and on that basis alleges that at all material times,  
 26 each of the Defendants has acted as her employer and/or joint employer within the meaning of the  
 27 FLSA and California law.

12. Plaintiff is informed and believes and on that basis alleges that at all times material herein, each of the Defendants was the agent, employee, and/or joint venturer of, or working in concert with, each other and was acting within the course and scope of such agency, employment, and/or joint venture or concerted activity. To the extent that said conduct and/or omissions were perpetrated by certain Defendants, Plaintiff is informed and believes and on that basis alleges that the remaining Defendant and/or Defendants confirmed and ratified said conduct and/or omissions.

13. Wherever reference is made to individuals who are not named as Defendants in this Complaint but are or were employees/agents of Defendants, or any of them, such references shall be deemed to mean that such individuals at all relevant times acted on behalf of Defendants within the scope of their employment.

## **FACTUAL ALLEGATIONS**

14. Between on or about July 8, 2002 and September 11, 2006, Plaintiff was employed by Defendants as a domestic worker living in their private residence.

15. At all times relevant herein, Defendants were employers within the meaning of the FLSA and the IWC Wage Order in that they directly or indirectly employed or exercised control over the wages, hours, and working conditions of Plaintiff. Defendants further controlled the manner and means by which the Plaintiff accomplished her work for Defendants.

16. At all times relevant herein, Defendants resided and employed Plaintiff in their residence located at 168 Isabella Avenue, Atherton, California 94207.

17. Defendants' residence, which is currently listed for sale, has been priced at over \$17 million and described in an online listing (<http://www.redfin.com/stingray/do/printable-listing?listing-id=193393>) as, *inter alia*, having six bedrooms, four bathrooms, and a separate one-bedroom, two-bathroom guesthouse, and encompassing over 9,000 square feet on a 1.81 acre lot.

18. As a live-in domestic worker for Defendants, the vast majority of Plaintiff's work hours involved cleaning Defendants' sizable residence. On either a daily basis or multiple times per week, Plaintiff was typically required to: make Defendants' beds; tidy the bedrooms; clean multiple bathrooms, which regularly involved washing showers, tubs, and sinks, wiping the counters and the

1 mirrors, and scrubbing the floors; clean the kitchens in the primary residence and the guesthouse,  
2 which regularly included clearing and washing dirty cups, dishes, pots and pans, wiping the counters  
3 and various appliances, and restocking the refrigerator; tidy the other rooms, including the family  
4 room, the living room, and the dining room; set and clear the table at meals; throw out the garbage;  
5 dust furniture; vacuum and/or mop the floors; launder and iron Defendants' clothes; organize and  
6 clean cupboards and closets; and engage in other general housecleaning duties. Moreover, Plaintiff  
7 was also required to clean the windows, both interior and exterior, of the residence; clean the private  
8 patio and the outdoor barbecue; and set up for parties.

9       19. In addition to her significant housecleaning duties, Plaintiff was typically required to  
10 cook and/or assist in meal preparation; to serve breakfast, lunch, and dinner; and to attend to  
11 Defendants and their guests, who frequently visited the house.

12       20. Though most of Plaintiff's work hours were devoted to these demanding household  
13 duties, she was also expected to provide child care for Defendants' young child, including waking  
14 her early in the morning to get her ready for school; bathing and clothing her; preparing her meals;  
15 feeding her; playing with her and/or supervising her; and putting her to bed at night.

16       21. Defendants typically required Plaintiff to work more than 14 hours per day on  
17 weekdays and up to 26 hours or more over the course of a weekend.

18       22. During a typical two-week pay period, Defendants regularly required Plaintiff to work  
19 13 days out of 14.

20       23. Throughout her employment with Defendants, Plaintiff was frequently required to  
21 work late into the night on weekend evenings, often past midnight, when Defendants threw elaborate  
22 dinner parties for large numbers of guests. Plaintiff typically worked more than 16 hours per day on  
23 these occasions. Not only was Plaintiff required to prepare for these dinner parties and serve party  
24 guests, she was required to clean up afterwards, including meticulously hand-washing Defendants'  
25 silverware and dinner plates.

26       24. At all times relevant herein, Defendants paid Plaintiff a fixed monthly wage of  
27 \$1,100.00, then \$1,300.00, and then \$1,000.00, regardless of the number of hours she actually  
28

1 worked. These fixed wages failed to compensate Plaintiff for all the hours she worked, including all  
2 her overtime and double time hours as required by law.

3 25. Plaintiff and Defendants did not enter into a voluntary written agreement to credit  
4 Plaintiff's lodging or meals against the minimum wage.

5 26. Defendants willfully and intentionally denied Plaintiff all the wages she was entitled  
6 to under the law.

7 27. At all times relevant herein, Defendants routinely failed to provide Plaintiff with a  
8 ten-minute net rest period for every four hours of work or major fraction thereof, as required by law.

9 28. At all times relevant herein, Defendants routinely required Plaintiff to work more than  
10 ten hours per day without providing her with two meal periods of not less than thirty minutes, as  
11 required by law.

12 29. Defendants routinely failed to keep accurate records as required by law that indicated  
13 when Plaintiff began and ended each work period, her meal periods, her total daily hours worked, her  
14 total hours worked in the payroll period, and applicable rates of pay.

15 30. Moreover, Defendants routinely failed to furnish Plaintiff with accurate itemized  
16 wage statements at the time of each payment of wages, showing her total hours worked, all  
17 applicable hourly rates in effect during the pay period, and the corresponding number of hours  
18 worked at each hourly rate, as required by law. As part of Defendants' failure to provide Plaintiff  
19 with the foregoing information, Plaintiff was not paid according to the law and was hindered in  
20 determining the amount of wages actually owed to her by Defendants and in challenging her rate of  
21 pay.

22 31. In addition to Defendants' deprivation of Plaintiff's basic labor rights, Defendants  
23 regularly yelled at Plaintiff and subjected Plaintiff to verbal abuse, such as shouting derogatory  
24 comments at her.

25 32. Defendants terminated Plaintiff's employment on or about September 11, 2006.

26 33. Plaintiff did not receive final payment of all accrued wages and compensation due her  
27 immediately upon termination, as required by law.

1       34. Plaintiff has demanded that Defendants pay her the wages and attendant penalties and  
2 damages she is owed. Defendants have refused these demands.

3       35. Defendants' conduct as described herein is a form of unfair competition against other  
4 employers who operate in compliance with the law. Defendants' pattern and practice of unlawful  
5 and unfair employment practices has injured Plaintiff and the general public. Defendants have  
6 benefited from and been unjustly enriched by their unlawful and unfair acts.

7       36. On or about August 2, 2007, Plaintiff filed an administrative wage claim with the  
8 California Division of Labor Standards Enforcement ("DLSE"), the state agency charged with  
9 enforcing California's labor laws.

10       37. Subsequently, the parties entered into a "Structured Negotiations Agreement"  
11 ("Tolling Agreement") that tolled the statutes of limitation with respect to any and all federal and  
12 state law claims that Plaintiff could assert against Defendants, as of August 14, 2007, for the  
13 purposes of facilitating settlement discussions.

14       38. On February 12, 2008, Defendants provided Plaintiff with written notice by certified  
15 mail of their intent to terminate settlement discussions and the Tolling Agreement.

16       39. Pursuant to the terms of the Tolling Agreement, the running of any applicable statutes  
17 of limitation with respect to Plaintiff's claims as alleged herein were tolled between August 14, 2007  
18 and March 13, 2008.

19       40. Additionally, pursuant to the doctrine of equitable tolling, any applicable statutes of  
20 limitation with respect to Plaintiff's claims under the California Labor Code ("Labor Code") have  
21 been tolled since she filed her administrative wage claim with DLSE. Plaintiff provided timely  
22 notice to the Defendants when she filed her DLSE claim alleging wage and hour violations under the  
23 Labor Code; Defendants have not been prejudiced because the filing of the DLSE claim alerted  
24 Defendants to the Labor Code violations alleged in the instant action; and Plaintiff acted reasonably  
25 and in good faith when she awaited the outcome of settlement discussions prior to filing the instant  
26 action.

27       41. Furthermore, Defendants failed to post and make available to Plaintiff the notice of  
28

1 rights pursuant to the FLSA as required under 29 C.F.R. § 516.4, and of California wage and hour  
 2 laws as required under § 21 of the IWC Wage Order. As a result, Plaintiff was unaware of her actual  
 3 rights under the law and unable to seek appropriate remedies, including the filing of a lawsuit,  
 4 throughout her employment with Defendants. Any statutes of limitation relating to Plaintiff's FLSA  
 5 and Labor Code claims were therefore suspended for the period of Plaintiff's employment with  
 6 Defendants and for a reasonable time period following the termination of her employment.

7 **FIRST CLAIM FOR RELIEF**

8 **[Failure to Pay Minimum Wage – FLSA, California Labor Code, and IWC Wage Order]**

9 42. Plaintiff incorporates by reference the allegations contained in paragraphs 1 through  
 10 41, inclusive, as though fully set forth herein.

11 43. The FLSA, Labor Code, and the IWC Wage Order applied to Plaintiff's employment  
 12 with Defendants at all times relevant herein.

13 44. Section 6 of the FLSA, 29 U.S.C. § 206, mandates that employers pay all employees  
 14 engaged in commerce or in the production of goods for commerce not less than \$5.15 per hour,  
 15 effective September 1, 1997.

16 45. Labor Code § 1197 and the IWC Wage Order § 4 mandate that an employer shall pay  
 17 all employees the minimum wage of \$6.75 per hour.

18 46. At all times relevant herein, Defendants paid Plaintiff a fixed monthly wage that  
 19 failed to pay Plaintiff the minimum wage for all her hours worked, in violation of the FLSA, the  
 20 Labor Code, and the IWC Wage Order.

21 47. Pursuant to § 16(b) of the FLSA, 29 U.S.C. § 216(b), and Labor Code § 1194(a) and  
 22 1194.2(a), Plaintiff is entitled to recover her unpaid minimum wages, including interest and  
 23 liquidated damages thereon, in amounts to be proven at trial.

24 48. Under § 16(b) of the FLSA, 29 U.S.C. § 216(b), and Labor Code § 1194(a), Plaintiff  
 25 is also entitled to recover reasonable attorneys' fees and costs.

26 **SECOND CLAIM FOR RELIEF**

27 **[Failure to Pay Overtime Wages – California Labor Code and IWC Wage Order]**

28 49. Plaintiff incorporates by reference the allegations contained in paragraphs 1 through

1 48, inclusive, as though fully set forth herein.

2       50. The Labor Code and the IWC Wage Order applied to Plaintiff's employment with  
3 Defendants at all times relevant herein.

4       51. Labor Code § 1198 and the IWC Wage Order § 3 (A) and (B) mandate that domestic  
5 service "live-in" employees shall not be employed more than nine hours in any workday for the first  
6 five workdays in any week unless they receive additional compensation beyond their regular wages  
7 in amounts specified by law. Such employees are entitled to overtime pay at not less than one and  
8 one-half times the employee's regular rate of pay for all hours worked in excess of nine during the  
9 first five workdays, or for the first nine hours on the sixth and seventh day of work in a workweek.  
10 For the remaining hours worked in excess of nine hours on the sixth and seventh days of the  
11 workweek, such employees are entitled to be paid double the employee's regular rate of pay.

12       52. At all times relevant herein, Defendants paid Plaintiff a fixed monthly wage that  
13 failed to compensate her at one and one-half times her regular rate of pay for her hours worked in  
14 excess of nine hours per day during her first five workdays, or for her first nine hours on her sixth  
15 and seventh consecutive days in a workweek. Defendants also failed to pay Plaintiff at double her  
16 regular rate of pay for all hours worked in excess of nine hours on the sixth and seventh days of the  
17 workweek. Defendants' denial of overtime and double time compensation to Plaintiff violated the  
18 Labor Code and the IWC Wage Order, as set forth herein.

19       53. Under Labor Code § 1194(a), Plaintiff is entitled to recover her unpaid overtime and  
20 double time compensation, including interest thereon, in amounts to be proven at trial.

21       54. Under Labor Code § 1194(a), Plaintiff is also entitled to recover reasonable attorneys'  
22 fees and costs.

### 23           THIRD CLAIM FOR RELIEF

#### 24           [Failure to Provide Meal Periods – California Labor Code and IWC Wage Order]

25       55. Plaintiff incorporates by reference the allegations contained in paragraphs 1 through  
26 54, inclusive, as though fully set forth herein.

27       56. The Labor Code and the IWC Wage Order applied to Plaintiff's employment with  
28 Defendants at all times relevant herein.

1       57. Labor Code § 512(a) and the IWC Wage Order § 11(A) and (B) require that  
 2 employers not employ any person for a work period of more than five hours without providing a  
 3 meal period of not less than 30 minutes, or for a work period of more than ten hours per day without  
 4 providing the employee with a second meal period of not less than thirty minutes.

5       58. Under Labor Code § 226.7(b) and the IWC Wage Order § 11(D), an employer who  
 6 fails to provide an employee with a meal period in accordance with IWC Wage Order § 11(A) and  
 7 (B) is liable to the employee for premium pay equal to one hour's pay for each day that the employer  
 8 failed to provide any required meal period.

9       59. At all times relevant herein, Defendants routinely employed Plaintiff for a work  
 10 period of more than ten hours per day without providing Plaintiff with two meal periods of not less  
 11 than thirty minutes and thereby violated the Labor Code and the IWC Wage Order as set forth herein.

12       60. Pursuant to Labor Code § 226.7(b), Plaintiff is entitled to recover compensation, plus  
 13 interest thereon, in amounts to be proven at trial, for Defendants' failure to provide meal periods.

14       61. Pursuant to Labor Code § 218.5, Plaintiff is also entitled to attorneys' fees and costs.

#### FOURTH CLAIM FOR RELIEF

##### **[Failure to Provide Rest Periods – California Labor Code and IWC Wage Order]**

17       62. Plaintiff incorporates by reference the allegations contained in paragraphs 1 through  
 18 61, inclusive, as though fully set forth herein.

19       63. The Labor Code and the IWC Wage Order applied to Plaintiff's employment with  
 20 Defendants at all times relevant herein.

21       64. Section 12(A) of the IWC Wage Order requires that employers authorize and permit  
 22 all non-exempt employees to take rest periods, at the rate of ten minutes net rest time for every four  
 23 hours or major fraction of four hours worked.

24       65. Under Labor Code § 226.7(b) and the IWC Wage Order § 12(B), an employer who  
 25 fails to authorize or permit any required rest period is liable to the employee for premium pay equal  
 26 to one hour's pay for each day that the employer failed to provide the rest period.

27       66. At all times relevant herein, Defendants routinely failed to authorize or permit  
 28 Plaintiff to take rest periods as required by law and thereby violated the Labor Code and the IWC

1 Wage Order, as set forth herein.

2       67. Pursuant to Labor Code § 226.7(b), Plaintiff is entitled to recover compensation, plus  
3 interest thereon, in amounts to be proven at trial, for Defendants' failure to provide rest breaks.

4       68. In addition, Plaintiff is entitled to attorneys' fees and costs pursuant to Labor Code §  
5 218.5.

#### 6 FIFTH CLAIM FOR RELIEF

##### **[Failure to Furnish Wage and Hour Statements – California Labor Code]**

8       69. Plaintiff incorporates by reference the allegations contained in paragraphs 1 through  
9 68, inclusive, as though fully set forth herein.

10      70. The Labor Code applied to Plaintiff's employment with Defendants at all times  
11 relevant herein.

12      71. Labor Code § 226(a) requires that employers furnish each employee with an  
13 itemized statement for each pay period showing, *inter alia*, total hours worked, all applicable hourly  
14 rates in effect during the pay period, and the corresponding number of hours worked at each hourly  
15 rate by the employee.

16      72. Under Labor Code § 226(e), an employee suffering injury as a result of a knowing and  
17 intentional failure by an employer to comply with Labor Code § 226(a) is entitled to recover the  
18 greater of all actual damages or \$50.00 for the initial pay period in which a violation occurs and  
19 \$100.00 per employee for each violation thereafter, not exceeding an aggregate penalty of \$4,000.00.

20      73. At all times relevant herein, Defendants routinely failed to provide Plaintiff with  
21 accurate itemized wage statements showing, *inter alia*, her total hours worked, all applicable hourly  
22 rates in effect during the pay period, and the corresponding number of hours worked at each hourly  
23 rate by the employee. As a result, Defendants violated the Labor Code, as set forth herein.

24      74. As part of Defendants' failure to provide Plaintiff with the foregoing information,  
25 Plaintiff was not paid according to the law and was hindered in determining the amount of wages  
26 actually owed to her by Defendants and in challenging her rate of pay.

27      75. Pursuant to Labor Code § 226(e), Plaintiff is entitled to the greater of actual damages  
28 or penalties, in an amount to be proven at trial, plus attorneys' fees and costs.

**SIXTH CLAIM FOR RELIEF****[Waiting Time Penalties – California Labor Code]**

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76. Plaintiff incorporates by reference the allegations contained in paragraphs 1 through 75, inclusive, as though fully set forth herein.

77. Labor Code § 201 mandates that employers pay their employees all earned wages immediately upon discharge. Furthermore, Labor Code § 203 authorizes an employee to recover penalties in an amount equal to the employee's wages for up to thirty days if an employer willfully fails to pay any wages earned and due to the employee at the time of the employee's separation from such employment.

78. Defendants fired Plaintiff on or around September 11, 2006.

79. At all relevant times, Defendants willfully failed to pay Plaintiff all minimum, overtime, and double time wages due as set forth in the Labor Code and the IWC Wage Order. At all relevant times, Defendants willfully failed to provide Plaintiff with statutory compensation for missed meal and rest breaks as required by the Labor Code and the IWC Wage Order. Defendants willfully failed to pay Plaintiff all wages owed to her immediately upon her discharge, and such earned wages remain unpaid, in violation of the Labor Code as set forth herein.

80. Since her termination, Plaintiff has demanded that Defendants pay her owed wages. Defendants have refused and continue to refuse Plaintiff's demand.

81. Pursuant to Labor Code § 203, Plaintiff is entitled to waiting time penalties in an amount equal to 30 days' wages, to be proven at trial.

**SEVENTH CLAIM FOR RELIEF****[Unlawful and Unfair Business Practices – Cal. Business & Professions Code § 17200]**

82. Plaintiff incorporates by reference the allegations contained in paragraphs 1 through 81, inclusive, as though fully set forth herein.

83. Plaintiff brings this cause of action in her individual capacity pursuant to California Business and Professions Code §§17200 *et seq.*

84. The conduct of Defendants as alleged herein has been and continues to be unfair, unlawful and deleterious to Plaintiff and to the general public.

1       85. Section 2 of the FLSA, 29 U.S.C. § 202, and Labor Code § 90.5(a) articulate the  
 2 federal and state public policy to vigorously enforce minimum labor standards, to ensure that  
 3 employees are not required or permitted to work under substandard and unlawful conditions, and to  
 4 protect employers who comply with the law from those who attempt to gain competitive advantage  
 5 at the expense of their workers by failing to comply with minimum labor standards.

6       86. Defendants have committed unlawful and/or unfair business practices, including but  
 7 not limited to the following:

- 8           (a) Failure to pay minimum wage for all hours worked, in violation of § 6 of the FLSA,  
                  29 U.S.C. § 206, Labor Code § 1197, and the IWC Wage Order § 4;
- 9           (b) Failure to pay overtime and double time premiums, in violation of Labor Code § 1198  
                  and the IWC Wage Order § 3 (A) and (B);
- 10          (c) Failure to provide meal periods in violation of Labor Code §§ 512 and 226.7, and the  
                  IWC Wage Order § 11;
- 11          (d) Failure to provide rest periods in violation of Labor Code § 226.7 and the IWC Wage  
                  Order § 12;
- 12          (e) Failure to furnish accurate and complete itemized wage statements for each pay  
                  period in violation of Labor Code § 226; and
- 13          (f) Failure to promptly pay wages owed at discharge, in violation of Labor Code § 201.

14       87. Through the conduct alleged herein, Defendants have acted contrary to the FLSA, the  
 15 Labor Code, and public policy, and have thus engaged in unlawful and/or unfair business practices in  
 16 violation of Business and Professions Code §§ 17200 *et seq.*, depriving Plaintiff, all persons  
 17 similarly situated, and all interested persons of rights, benefits, and privileges guaranteed to all  
 18 employees under the law. As a result, Defendants have been unjustly enriched.

19       88. Defendants' unlawful and/or unfair acts have resulted in Plaintiff's injuries. As a  
 20 direct and proximate result of Defendants' unlawful and/or unfair business acts and practices,  
 21 Defendants have received and continue to maintain possession of funds that rightfully belong to  
 22 Plaintiff.  
 23

89. The victims of these unfair and unlawful business practices include, but are not limited to, Plaintiff and the general public. Plaintiff is informed and believes and thereupon alleges that Defendants performed the above-mentioned acts to gain an unfair competitive advantage, thereby injuring Plaintiff and the general public.

90. Business and Professions Code §17203 provides that the Court may restore to an aggrieved party any money or property acquired by means of unlawful or unfair business practices. Therefore, Plaintiff requests restitution of all wages and compensation wrongfully retained by Defendants in violation of the FLSA, the Labor Code, and the IWC Wage Order, as enumerated herein.

91. Furthermore, Plaintiff requests attorneys' fees and costs pursuant to California Code of Civil Procedure § 1021.5 upon proof that Plaintiff has sought to enforce important rights affecting the public interest. All remedies are cumulative pursuant to Business and Professions Code § 17205.

## **DECLARATORY RELIEF ALLEGATIONS**

92. Plaintiff incorporates by reference the allegations contained in paragraphs 1 through 91, inclusive, as though fully set forth herein.

93. A present and actual controversy exists between Plaintiff and Defendants concerning their rights and respective duties. Plaintiff contends that Defendants violated her rights under the FLSA, the Labor Code, and the IWC Wage Order. Plaintiff also contends that Defendants violated California's laws against unfair and unlawful business practices, and that the general public has been thereby injured. Plaintiff is informed and believes, and thereon alleges, that Defendants deny these allegations. Plaintiff seeks a judicial declaration of the rights and duties of the respective parties. Declaratory relief is therefore necessary and appropriate.

## **PRAYER FOR RELIEF**

WHEREFORE, Plaintiff respectfully prays that this Court enter judgment against Defendants as follows:

1. Declaratory relief, according to proof;

- 1       2. Unpaid minimum wages, according to proof;
- 2       3. Unpaid overtime and double time premiums, according to proof;
- 3       4. Unpaid compensation for failure to provide meal periods, according to proof;
- 4       5. Unpaid compensation for failure to provide rest breaks, according to proof;
- 5       6. Restitution of unpaid compensation, according to proof;
- 6       7. Liquidated damages under 29 U.S.C. § 216(b) and Labor Code § 1194.2(a), in an amount equal to wages unlawfully unpaid;
- 7       8. Statutory damages under Labor Code § 226(e) for failure to provide itemized pay statements, according to proof;
- 8       9. Waiting time penalties under Labor Code § 203 for failure to pay wages due upon separation, according to proof;
- 9       10. General, compensatory, and special damages, according to proof;
- 10      11. Interest accrued on Plaintiff's damages, including pre- and post-judgment interest, and an upward adjustment for inflation, under Labor Code §§ 1194 and 1194.2 (a) and Cal. Civ. Code § 3287;
- 11      12. Reasonable attorneys' fees and costs of suit pursuant to 29 U.S.C. § 216 (b), Labor Code §§ 218.5, 226 (e), and 1194 (a), Cal. Code of Civ. Proc. §1021.5, and other laws; and
- 12      13. Such other and further relief as this Court deems just and proper.

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1 Dated: March 13, 2008

Respectfully submitted,

2 Christina Chung  
3 Matthew Goldberg  
4 Carole Vigne  
5 THE LEGAL AID SOCIETY –  
6 EMPLOYMENT LAW CENTER

7 Hillary Ronen  
8 Rocio Avila  
9 LA RAZA CENTRO LEGAL

10 By:

11   
12 Attorneys for Plaintiffs

13 **JURY TRIAL DEMAND**

14 Plaintiff hereby demands a jury trial as provided by Rule 38 (a) of the Federal Rules of Civil  
15 Procedure.

16 Dated: March 13, 2008

Respectfully submitted,

17 Christina Chung  
18 Matthew Goldberg  
19 Carole Vigne  
20 THE LEGAL AID SOCIETY –  
21 EMPLOYMENT LAW CENTER

22 Hillary Ronen  
23 Rocio Avila  
24 LA RAZA CENTRO LEGAL

25 By:

26   
27 Attorneys for Plaintiffs

**CONSENT OF INDIVIDUAL EMPLOYEE**  
**TO BECOME PARTY PLAINTIFF IN ACTION**  
**UNDER § 16(b) OF FAIR LABOR STANDARDS ACT**  
[29 U.S.C. § 216]

To: The Clerk of the Court and to each Party  
and to Counsel of record

I, **Vilma Serralta**, hereby consent to become a party plaintiff in the lawsuit entitled: *Serralta v. Sakhawat Khan and Roomy Khan*

Dated: 3-7-2008

Vilma Serralta  
Signature  
VILMA SERRALTA  
Print Name

**DECLARATION OF TRANSLATOR**

I, Carole Vigne, declare that I have translated the above document from English to Spanish for **Vilma Serralta** and witnessed her signature thereon.

Dated: 03/07/2008

Carole Vigne  
Signature